



# Cigarette Tax Study

Prepared by the Cigarette Tax  
and Revenue Loss Advisory  
Committee

December 1995

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## Cigarette Tax and Revenue Loss Advisory Committee

### Report to the Legislature

December 1995

## **Introduction**

The State of Washington imposes a tax on the sale, use, consumption, handling, possession, and distribution of cigarettes. The rate of tax increased from 56½¢ per pack to 81½¢ per pack on July 1, 1995, and the rate will increase on July 1, 1996, to 82½¢ per pack. In addition to this tax, state and local sales and use taxes and business and occupation taxes apply to the sale of cigarettes equal to approximately 15¢ to 19¢ per pack, depending on the price.

According to estimates from the Department of Revenue, the state is losing an increasing amount of revenues per year from illegal sales of untaxed cigarettes. These losses occur from casual smuggling from lower-tax states and the purchase of cigarettes from tax-free outlets such as military post exchanges and Indian smokeshops. Federal law prevents the state from taxing the federal government directly. Therefore, the state is prohibited from taxing sales made by military post exchanges. Federal law also prevents the state from taxing cigarettes sold at an outlet on an enrolled Indian tribal member's tribal reservation to an enrolled tribal member for personal consumption. Sales made to non-tribal members are subject to the tax, but many Indian retailers do not collect the tax.

Because of this problem, a joint select committee, known as the Cigarette Tax and Revenue Loss Advisory Committee, was established by Senate Concurrent Resolution No. 8417 to study current state law on the unlawful possession, purchase, sale, and use of unstamped and untaxed cigarettes on Indian reservations by non-tribal members. See Appendix A for a complete text of the resolution. The study was to include:

(1) A review and analysis of lost cigarette tax revenue for 1992 through 1995 and an analysis of the revenue losses that might be attributable to cigarette tax increases that took effect during that time;

(2) An analysis of the feasibility of negotiating cooperative agreements between the state and Indian tribes; and

(3) An assessment of the effect of tax rates on cigarette compliance to identify the state's best opportunity to ensure compliance and reduce conflict.

The Committee consisted of four members of the Senate, four members of the House of Representatives, two members from the convenience store industry, one distributor of tobacco products, three members representing federally recognized Indian tribes, a designee of the governor, and a designee of the director of revenue. For a complete list of the committee members and staff, see Appendix B.

### **Areas of Examination**

Initially, the Committee was briefed on the history of cigarette taxation in the state, the cigarette distribution system, the collection of the cigarette tax through tax stamps, wholesalers' responsibilities, wholesaler licensing and bonding requirements, Liquor Control Board regulatory authority, the allocation system for purchase of tax-free cigarettes by Indians, penalties for transporting untaxed cigarettes, areas of tax evasion, including military transactions, cross-border transactions, and Indian retailers, the enforcement experience with Indians, and recent state-tribal negotiations. A chart of the historical cigarette tax rates, the distribution of the cigarette tax, and a summary of cigarette tax rates by state was also included. See Appendix C for the summary outline of the briefing.

The Committee reviewed the cigarette tax program which provided an overview of cigarette tax distributions, including in-state distributions, out-of-state distributions, military reservation sales, Indian reservation sales, export distributions, mail-order sales, and foreign sales. Price differentials were also examined. See Appendix D for the Cigarette Tax Program Review. Estimates of revenue losses resulting from tax evasion were provided by the Department of Revenue based on state and national consumption data. See Appendix E on Preliminary Revenue Impacts of Untaxed Cigarette Sales in Washington.

The Committee was briefed on the characteristics of Indian Tribes in Washington state (Appendix

F), tribal services and funding (Appendix G), cigarette distribution and sales on the Colville Reservation (Appendix H), and Colville Indian Reservation Economies (Appendix I).

The Committee reviewed the legal background of federal Indian law, cigarette agreements and legislation in other states, and the cigarette tax compact negotiated by the State of Washington and the Puyallup Tribe. See Appendix J. For the complete text of the compact, see Appendix K. For a summary of the compact, see Appendix L. As a part of the legal background, materials were presented on revenues received by the State of Oklahoma under tax compacts negotiated with Indian tribes. See Appendix M.

The Committee was presented with the smuggling experience of both Canada and the State of Michigan when they raised their cigarette tax rates. See Appendices N and O. An economic analysis by the Congressional Research Service of funding health care reform at the federal level by increasing the federal cigarette tax rate was provided. See Appendix P.

The effect of tax rates on cigarette tax compliance was examined with a review of cigarette tax losses for the years 1992 through 1995 and an analysis of the elasticity of cigarette sales based on price (Appendix Q). Revenues and expenditures from the Health Care Services Account were examined to see the effect of a tax rate decrease. See Appendix R.

### **Findings**

For fiscal year 1995, the number of untaxed cigarette packs sold in Washington is estimated at 78.3 million. This results in a revenue loss of \$58.1 million. For fiscal year 1996, the number of untaxed cigarette packs sold in Washington is estimated to increase to 100.3 million because of the increase in the tax rate that was effective July 1, 1995. This will result in a revenue loss of \$101.7 million. Indian sales are estimated to represent 60 percent of all sales of untaxed cigarettes. Military sales and casual smuggling account for the remaining 40 percent.

Military sales and casual smuggling account for 31.1 million packs of untaxed cigarettes in fiscal

year 1995 with a revenue loss of \$23.3 million. In fiscal year 1996, the number of untaxed cigarette packs from this source is estimated to increase to 40.1 million packs with a resulting revenue loss of \$40.7 million.

The United States Supreme Court has affirmed the states' right to collect cigarette taxes on on-reservation sales made by Indians to non-Indians and has held that the state may impose minimal burdens on Indian sellers to assist in the collection of state taxes imposed on non-Indian purchasers. However, tribes remain immune from suit even if it impedes the collection of the state tax. In the absence of an express waiver by the tribe or the United States, the state cannot sue an Indian tribe for failure to collect or pay a tax.

The State of Oklahoma has entered into tax compacts with Indian tribes concerning the sale of cigarettes. Under the compacts, a tax equal to 25 percent of the otherwise applicable tax rate applies to all sales of cigarettes by Indian tribes and their licensees. In the absence of a compact, the tax on sales of cigarettes by Indian tribes and their licensees is equal to 75 percent of the otherwise applicable tax rate. A refund is authorized for Indian tribes that can show that sales to members of the tribe exceed 25 percent of its total sales. Under the compacts, the state received \$10.4 million dollars in tax revenues from Indian tribes from February 1993 through June 1995. No revenues were received by the state from Indian tribes not electing to enter into compacts with the state. There has been no litigation concerning the compacts, and the compacts appear to be working well.

### **Majority Recommendations**

The Committee recommends a path of mutual cooperation with federally recognized Indian tribes in the State of Washington by authorizing the Governor to negotiate revenue-sharing agreements with those tribes. While recognizing the individual sovereignty of both the tribes and the state, these agreements can provide for increased revenues for both the state and the tribes. In addition, by allowing for the possibility of simultaneously negotiating the removal of unstamped cigarettes from the reservations, enforcement of the state's cigarette tax laws can be greatly enhanced.

Negotiated agreements should contain the following provisions.

(1) Tribal licensed retailers shall only make sales of cigarettes in which delivery and physical transfer of possession of the cigarettes from the seller to the buyer occurs within the boundaries of the reservation. Cooperative agreements shall provide that the tribe or tribal licensed retailers shall not sell cigarettes to any person under the age of eighteen years.

(2) A tribal cigarette tax must be imposed in lieu of all state cigarette and state and local retail sales and use taxes on sales of cigarettes on the reservation by a tribe or tribal licensed store. The tribal cigarette tax shall apply to all sales of cigarettes to Indian and non-Indian purchasers, unless the tribal constitution prohibits imposition of a tax on tribal members. The tribal cigarette tax shall be no less than \$3.54 per carton of 200 cigarettes. The minimum tribal tax shall be prorated for sales of less than a full carton and for sales of cartons containing fewer or more than 200 cigarettes. The minimum tribal cigarette tax shall increase by no less than 25 percent of any future increase in the state cigarette tax rate. The minimum tribal cigarette tax shall be reduced by 25 percent of that portion of any future reduction in the state cigarette tax which leaves the total state cigarette tax at or above \$7.65 per carton and by 100 percent of that portion of any future reduction in the state cigarette tax which leaves the total state cigarette tax below \$7.65 per carton but at or above \$5.65 per carton. If any future reduction in the state cigarette tax leaves the total state cigarette tax below \$5.65, the state and the Indian tribe or nation shall negotiate the minimum tribal cigarette tax.

(3) All cigarettes possessed or sold by tribes or tribal licensed retailers shall bear a tribal cigarette tax stamp.

(4) The tribe and tribal licensed retailers shall purchase cigarettes only from approved sources.

(5) Cooperative agreements shall be for a term of no more than eight years.

(6) A tribe may substitute the tribe's agreement with the state for a cooperative agreement concerning the sales of cigarettes subsequently negotiated between the state and a different tribe, except for the expiration date.

(7) Cooperative agreements may provide for the payment by the tribe to the State of Washington of a portion of the tribal cigarette tax collected under the agreement.

(8) Cooperative agreements may permit the submission of disputes regarding the

interpretation and administration of their provisions for judicial resolution, provided that a waiver of sovereign immunity and consent by the state for such resolution shall be conditioned upon a similar waiver of sovereign immunity by the Indian tribe, which waiver shall be approved or otherwise confirmed by the United States as may be required by law.

(9) Cooperative agreements shall contain provisions for administration and enforcement substantially equivalent to those contained in the Cigarette Tax Compact Between the Puyallup Tribe of Indians and the State of Washington" dated \_\_\_\_\_.

See Appendix S for draft legislation implementing the Committee's recommendations.

States have very limited jurisdiction within Indian Reservations. For more than 20 years Washington and other States with Indian reservations have tried to collect state taxes on sales of cigarettes made within Indian reservations without significant success. The courts have upheld the states' right to collect such taxes only on sales to non-Indians, and have upheld the tribes' rights to tax all sales on their reservations. However, the courts have not provided an effective mechanism -- such as seizure of cigarettes on the reservations or legal action against tribes -- for the states to enforce the collections of state taxes. As a study commissioned by the Florida Legislature concluded:

Other than seizure of unstamped cigarettes, which is an inefficient and ineffective enforcement method, and suit of individual tribal members, the courts have not provided the states a remedy for collection of unpaid tax.

Several states have determined as a matter of policy that the state should not tax cigarette sales made on Indian reservations. Florida, Mississippi, and New Mexico exempt all sales on reservations from state taxation. This recognizes the tribes' need for income, and results in the tribes imposing their own taxes, narrowing the gap in the price of tribal sales and off-reservation sales. Other states have entered into compacts with tribes for the collection of a single tax, with revenues shared by the state and the tribe. An example of a recent success has been Oklahoma,



where in recent years the state has made compacts with 13 tribes, eliminating bootlegging by those tribes and collecting substantial revenue without confrontation or litigation. Letters from the Oklahoma State Tax Commission, and the Chairman of the Oklahoma Senate Appropriations Committee, confirmed the success of those compacts. Testimony by an international expert on smuggling, presented before the Committee, also affirmed the efficacy of such compacts.

It is not the recommendation of the Committee that Washington exempt all sales on reservations from state taxation, though the tribes argue for the fairness of that procedure based on their own right to tax and their dire need for revenue as federal assistance is reduced. But after a very thorough investigative process, the Committee does recommend to the Legislature that legislation be adopted in the form attached to this report as Appendix S. The legislation would authorize the Governor to enter into the Cigarette compact negotiated by the State and the Puyallup Tribe, with additional authority to enter into similar agreements with other tribes. The legislation sets forth standards that agreements must meet before they can be adopted by the state.

The proposed legislation and the cigarette compact that has been negotiated would resolve an issue that has bitterly divided the state and Indian tribes for twenty years. They would establish and ensure enforcement of an agreed set of guidelines for cigarette sales on Indian reservations. Negotiated agreements between other states and Indian tribes have worked to the benefit of both state and tribal governments. The state receives substantial revenue that it would not receive absent the agreement. All cigarette sales are documented and accounted for and are subject to the appropriate taxes. Both state and tribal governments can use their tax revenue for more positive purposes than constant and inconclusive litigation.

The Puyallup Compact, and the minimum standards established in the proposed legislation for other compacts, include the following provisions:

- There is a tribal tax required, which narrows the existing price differential; revenue generated by the tax is divided between the tribe and state; and the tax rate is almost twice that provided in the Oklahoma compacts.

- A tribal cigarette tax stamp is required; it is sold and administered in the same manner as the state cigarette stamps and taxes; and like the state tax, the tribal cigarette tax is collected at the time the wholesaler obtains the cigarettes, before they reach the retailer or the consumer.
- All cigarette inventories purchased by Indian outlets will be from wholesalers licensed by the state; the wholesalers and the stamp vendor will therefore account for all cigarettes sold; and that information will be available both to the tribe(s) and to the state;
- Cooperative enforcement of the Compact's provisions is allocated between the tribe(s) and the state; and both have an incentive for effective and coordinated enforcement and a system is created to overcome the jurisdictional gaps that would exist for either government acting individually.

The Committee recognizes the position of the minority report, but attempts to collect the full amount of state taxes on Indian reservations, whether ultimately paid to the state or the tribes have uniformly failed. The imposition of such taxes in effect puts tribal sellers out of business because no one will go out of his or her way to buy on an Indian reservation without some price advantage. This is particularly so because of the low prices already offered by mass retailers. As a result, the tribes can not be expected to agree to imposition of 100 percent of state taxes, and the current situation will simply continue. Additionally, the tribes clearly have the right to impose their own taxes, and -- as our investigation documented -- they provide programs for their people that relieve the state of a burden. As a result, some accommodation by the state is not only necessary but fair.

The Committee recommends the negotiated Compact and the recommended guidelines as a solution far superior to the existing situation.

## **Minority Recommendations**

Members of the Washington State Cigarette Tax and Revenue Loss Advisory Committee want to be on record opposing legislation that would allow the Washington State Department of Revenue to enter into agreements with Tribal Nations for the collection of cigarette taxes.

The Indian agreement will still create an uneven playing field between retailers and tribal smokeshops. According to the Department of Revenue, Indian smokeshops currently charge \$8.00 to \$14.19 for a carton of generic cigarettes. Retailers currently charge \$17.81 to \$24.29 for a carton of generic cigarettes. This is a differential of at least \$9.81. Under the proposed Indian agreement, with a 43 percent collection of the excise tax, the differential will be \$4.65. The Committee also did not look into the economic multiplier effect of the sales tax and the business and occupation tax on cigarette prices. The average sales tax on a carton of cigarettes is \$1.65, and the business and occupation tax would be about \$0.10. This brings the total differential to about \$6.40 and gives Indian smokeshops a distinct competitive advantage.

The Indian agreement will make it legal for non-Indians to purchase cigarettes legally at Indian smokeshops. Law-abiding smokers who would not break the law by crossing the line will now have no inhibition about going to Indian smokeshops to legally purchase cigarettes at a significant price differential from their local retailers. In addition, the economic incentives that motivate Washington state citizens to cross state borders to purchase cigarettes in Oregon (\$0.38 per pack); Idaho (\$0.28 per pack); and Montana (\$0.18 per pack) will still exist. Again, this is just the excise tax. Washington state adds the sales tax and the business and occupation tax to cigarettes. In addition, under the agreement the state will relinquish its authority over interstate and intrastate sales and between Indian Nations.

Some Tribal Trust Lands are in urban areas and with an Indian agreement this state will see an expansion of Indian smokeshops throughout Washington. There is a provision that would prohibit a "Domino's Delivery" or mail-order system to sell cigarettes by Indian smokeshops, but there is no mechanism for the Department of Revenue to enforce "face to face" sales or contain

the proliferation of new smokeshops in high population areas.

The Committee never addressed a critical question: "Why doesn't the Department of Revenue enforce the law against the purchase of untaxed cigarettes by non-Indian consumers?" We believe this issue should have been scrutinized in more detail. The Committee should have also looked at 1991 legislation that would have transferred cigarette tax enforcement authority to the Liquor Control Board. This legislation passed both Houses and was vetoed by Governor Gardner. Some interests contend that the Department of Revenue's mission is to collect taxes. The agency does not have the law enforcement capabilities to combat organized crime activities. The Liquor Control Board or the State Patrol do. Perhaps the Organized Crime Intelligence Unit within the Washington State Patrol should be considered for enforcement authority, with the Legislative Organized Crime Task Force given oversight.

During public hearings conducted by the Committee, compelling testimony and evidence from expert witnesses was given that indicated that Washington state may be on the verge of attracting organized crime syndicates that have knowledge of our state's highest ranking cigarette tax status. These organized crime syndicates will move into Washington as they have done in Michigan where the tax is currently \$0.75 per pack, Arizona, California, and Canada to operate sophisticated smuggling and illegal bootleg cigarette sales operations.

There should also be more assessment relating to the tax rates and whether a reduction to the taxes would accomplish the goals outlined by the legislation in a more equitable, efficient, cost-effective, and permanent manner.

Therefore, the Committee should request that the State Organized Crime Task Force be given legislative direction to establish a system to monitor, track, and report to the Legislature on cross-border sales, and casual and organized smuggling, for a period of one year.

In summary, we believe that the enactment of legislation allowing the state to sign compacts with Tribal Nations on the sale of cigarettes and the collection to taxes would sweep the real problem

of high cigarette taxes under the rug instead of resolving it.

The printed version of this report includes the appendices. For a copy please call House Finance Committee Staff at 360 786-7124.



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HOUSE BILL 2235

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State of Washington

54th Legislature

1996 Regular Session

By Representatives B. Thomas, Sheldon, Regala, Fuhrman and Elliot; by request of Cigarette Tax & Revenue Loss Advisory

Read first time 01/08/96. Referred to Committee on Finance.

1       AN ACT Relating to negotiation of cooperative agreements between  
2 the governor of the state of Washington and federally recognized Indian  
3 tribes within the borders of the state of Washington concerning the  
4 sales of cigarettes; adding new sections to chapter 43.06 RCW; adding  
5 a new section to chapter 82.08 RCW; adding a new section to chapter  
6 82.12 RCW; adding a new section to chapter 82.24 RCW; creating a new  
7 section; providing an effective date; and declaring an emergency.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9       NEW SECTION.   **Sec. 1.** (1) The legislature intends to enhance the  
10 government-to-government relationship enjoyed by both the state of  
11 Washington and the federally recognized Indian tribes in the state of  
12 Washington by authorizing the governor to enter into cooperative  
13 agreements with federally recognized Indian tribes in the state of  
14 Washington concerning the sales of cigarettes.

15       (2) The United States Constitution provides that congress has the  
16 exclusive power to conduct affairs among the various Indian tribes, to  
17 the exclusion of the states where the power is exercised. In its  
18 interpretation of this constitutional provision, the supreme court of  
19 the United States has held that federally recognized Indian tribes and

1 nations are free to engage in sales of cigarettes to their members free  
2 of state taxation when made within the borders of their own Indian  
3 reservation. The supreme court has further held that a state is  
4 prohibited from bringing a lawsuit against an Indian tribe or nation to  
5 compel the tribe or nation to collect state taxes on sales made in  
6 Indian country to either members or nonmembers of the tribe or nation  
7 without either a waiver of immunity by the tribe or nation or  
8 congressional action authorizing the state's lawsuit. Finally, the  
9 supreme court has suggested that a state may provide other methods of  
10 collection of state taxes on sales of cigarettes made by Indian tribes  
11 or nations to persons who are not members of the tribe or nation, such  
12 as entering into mutually satisfactory agreements with Indian tribes or  
13 nations.

14 (3) The legislature intends to follow a path of mutual cooperation  
15 with federally recognized Indian tribes in the state of Washington by  
16 authorizing the governor to negotiate revenue-sharing agreements with  
17 those tribes. While recognizing the individual sovereignty of both the  
18 tribes and the state, these agreements can provide for increased  
19 revenues for both the state and the tribes. In addition, by allowing  
20 for the possibility of simultaneously negotiating the removal of  
21 unstamped cigarettes from the reservations, enforcement of the state's  
22 cigarette tax laws can be greatly enhanced.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.06 RCW  
24 to read as follows:

25 (1) The governor may enter into the cooperative agreement  
26 concerning the sales of cigarettes negotiated by the governor and the  
27 department of revenue with the Puyallup Tribe of Indians entitled  
28 "Cigarette Tax Compact Between the Puyallup Tribe of Indians and the  
29 State of Washington" dated . . . . for a term of eight years. In  
30 addition, the governor may enter into cooperative agreements with other  
31 federally recognized Indian tribes in the state of Washington  
32 concerning the sales of cigarettes. All cooperative agreements shall  
33 meet the requirements for cooperative agreements under this section and  
34 section 3 of this act.

35 (2) Cooperative agreements shall provide that the tribe or tribal  
36 licensed retailers shall only make sales of cigarettes in which  
37 delivery and physical transfer of possession of the cigarettes from the  
38 seller to the buyer occurs within the boundaries of the reservation, as



1 recognized by the United States secretary of the interior. In  
2 addition, cooperative agreements shall provide that the tribe or tribal  
3 licensed retailers shall not sell or give, or permit to be sold or  
4 given, to any person under the age of eighteen years any cigar,  
5 cigarette, or tobacco in any form.

6 (3) Cooperative agreements shall provide for a tribal cigarette tax  
7 in lieu of all state cigarette and state and local retail sales and use  
8 taxes on sales of cigarettes on the reservation by a tribe or tribal  
9 licensed retailers. The tribal cigarette tax shall apply to all sales  
10 of cigarettes to Indian and non-Indian purchasers, but the tribe may  
11 allow an exemption for sales to tribal members if, on the effective  
12 date of this section, the tribal constitution prohibits imposition of  
13 a tax on tribal members.

14 (4) Cooperative agreements shall provide that all cigarettes  
15 possessed or sold by the tribe or tribal licensed retailers shall bear  
16 a tribal cigarette tax stamp purchased by wholesalers from a bank or  
17 other suitable stamp vendor and applied to the cigarettes to verify  
18 payment of the tribal cigarette tax.

19 (5) Cooperative agreements shall provide that the tribe and tribal  
20 licensed retailers shall purchase cigarettes only from:

21 (a) Wholesalers or manufacturers licensed to do business in the  
22 state of Washington;

23 (b) Out-of-state wholesalers or manufacturers who, although not  
24 licensed to do business in the state of Washington, agree to comply  
25 with the terms of the cooperative agreement, are certified by the tribe  
26 to the state as having so agreed, and who do in fact so comply.  
27 However, the state may in its sole discretion exercise its  
28 administrative and enforcement powers over such wholesalers or  
29 manufacturers to the extent permitted by law; and

30 (c) A tribal wholesaler that purchases only from a wholesaler or  
31 manufacturer described in (a) or (b) of this subsection.

32 (6) Cooperative agreements shall be for a term of no more than  
33 eight years.

34 (7) Cooperative agreements may provide that the tribe, at its  
35 option, may substitute the tribe's agreement with the state of  
36 Washington for a cooperative agreement concerning the sales of  
37 cigarettes subsequently negotiated between the state of Washington and  
38 a different tribe. This option is conditioned upon the tribe  
39 substituting the entire subsequent agreement for the tribe's agreement,

1 except that the expiration date of the tribe's agreement shall remain  
2 unchanged.

3 (8) Cooperative agreements may provide for the payment by the tribe  
4 to the state of Washington of a portion of the tribal cigarette tax  
5 collected under the agreement. Any revenues received under this  
6 subsection shall be distributed in the same manner as cigarette tax  
7 revenues under chapter 82.24 RCW.

8 (9) Cooperative agreements may permit the submission of disputes  
9 regarding the interpretation and administration of their provisions for  
10 judicial resolution, but a waiver of sovereign immunity and consent by  
11 the state for the resolution shall be conditioned upon a similar waiver  
12 of sovereign immunity by the Indian tribe, which waiver shall be  
13 approved or otherwise confirmed by the United States as may be required  
14 by law.

15 (10) Cooperative agreements shall contain provisions for  
16 administration and enforcement substantially equivalent to those  
17 contained in the cigarette tax compact referred to in subsection (1) of  
18 this section.

19 (11) The governor may delegate the power to negotiate cooperative  
20 agreements to the department of revenue.

21 (12) For purposes of this section, "federally recognized Indian  
22 tribe or nation" means an Indian tribal entity that is recognized as an  
23 Indian tribe by the United States secretary of the interior.

24 NEW SECTION. Sec. 3. A new section is added to chapter 43.06 RCW  
25 to read as follows:

26 The tribal cigarette tax which is in lieu of all state cigarette  
27 and state and local retail sales and use taxes on sales of cigarettes  
28 on the reservation by a tribe or tribal licensed retailers as provided  
29 in section 2(3) of this act shall be no less than three dollars and  
30 fifty-four cents per carton of two hundred cigarettes. The minimum  
31 tribal tax shall be prorated for sales of less than a full carton and  
32 for sales of cartons containing fewer or more than two hundred  
33 cigarettes. The minimum tribal cigarette tax shall increase by no less  
34 than twenty-five percent of any future increase in the state cigarette  
35 tax rate. The minimum tribal cigarette tax shall be reduced by twenty-  
36 five percent of that portion of any future reduction in the state  
37 cigarette tax that leaves the total state cigarette tax at or above  
38 seven dollars and sixty-five cents per carton and by one hundred

1 percent of that portion of any future reduction in the state cigarette  
2 tax that leaves the total state cigarette tax below seven dollars and  
3 sixty-five cents per carton but at or above five dollars and sixty-five  
4 cents per carton. If any future reduction in the state cigarette tax  
5 leaves the total state cigarette tax below five dollars and sixty-five  
6 cents per carton, the state and the Indian tribe or nation shall  
7 negotiate the minimum tribal cigarette tax.

8 As used in this section, any future increase or reduction in the  
9 state cigarette tax means any increase or reduction in the cigarette  
10 tax rate occurring after the effective date of this section.

11 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.08 RCW  
12 to read as follows:

13 The tax levied by RCW 82.08.020 shall not apply to sales of  
14 cigarettes made by a federally recognized Indian tribe or nation or its  
15 licensees during the effective period of a cooperative agreement  
16 entered into between the state and the federally recognized Indian  
17 tribe or nation under section 2 of this act.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.12 RCW  
19 to read as follows:

20 The tax levied by RCW 82.12.020 shall not apply in respect to the  
21 use of cigarettes sold by a federally recognized Indian tribe or nation  
22 or its licensees during the effective period of a cooperative agreement  
23 entered into between the state and the federally recognized Indian  
24 tribe or nation under section 2 of this act.

25 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.24 RCW  
26 to read as follows:

27 This chapter shall not apply to the sale, use, consumption,  
28 handling, possession, or distribution of cigarettes by a federally  
29 recognized Indian tribe or nation or its licensees during the effective  
30 period of a cooperative agreement entered into between the state and  
31 the federally recognized Indian tribe or nation under section 2 of this  
32 act.

33 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
34 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and shall take  
2 effect April 1, 1996.

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